W. H. Swayne

90 U.S. 491
Oct. T. 1878

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~865.~~ 590

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

THE SIOUX CITY AND PACIFIC RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED OCTOBER 30, 1877.

1 United States circuit court, district of Iowa.

THE UNITED STATES
vs.
SIOUX CITY AND PACIFIC RAILROAD COMPANY.

Transcript.

2 Pleas in the circuit court of the United States of America, in and for the district of Iowa, at a term thereof begun and holden at the United States court in Des Moines, in said district, on the ninth day of October, the same being of the October term, 1876, of said court, before the Hon. John F. Dillon, judge of the circuit court in and for the eighth circuit, and Hon. James M. Love, judge of the district court for said district of Iowa.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the circuit court of the United States for the district of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between the United States, plaintiff, and the Sioux City and Pacific Railroad Company, defendant, a manifest error hath happened, to the great damage of the said United States, as by its complaint appears: we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceeding aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, the 19th day of December, A. D. 1876.

[SEAL.] ED. R. MASON,
Clerk U. S. C. C., District of Iowa.

Allowed.

Judge.

Filed Dec. 19, 1876.

E. R. MASON, *Clerk.*

3½ In obedience to the foregoing writ of error, I, Edward R. Mason, clerk of the circuit court of the United States for the district of Iowa, do hereby certify and return that hereto annexed are full, true, and complete copies of the petition, summons, marshal's return on same, demurrer to petition, answer of defendant, demurrer to answer, dismissal of counter claim, agreed statement, and all record-entries, together with the judgment-entry, in a certain cause wherein the United

States is plaintiff and the Sioux City and Pacific Railroad Company is defendant, as full, true, and complete as the originals of the same now remain on file and of record in my office.

I further certify that the original citation in said cause is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at my office in Des Moines, in said district, this the 27th day of April, A. D. 1877.

[SEAL.]

EDWARD R. MASON,
Clerk U. S. C. C., Dis't of Iowa.

4 UNITED STATES OF AMERICA,
District of Iowa:

In the circuit court of the United States for the district of Iowa.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE SIOUX CITY AND PACIFIC RAILROAD COMPANY, defendant.
} May term, 1875.

The United States of America, by James T. Lane, their attorney for the district of Iowa, who sues for the said United States, complains of the defendant, The Sioux City and Pacific Railroad Company, a corporation duly existing in the State of Iowa and in the district of Iowa, and claims of the said defendant twenty-one thousand one hundred and four dollars and forty-two cents, ($21,104.42.)

And for cause of such claim, avers:

5 1st. That heretofore, to wit, on the first day of July, 1862, by an act of Congress entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862—

The Union Pacific Railroad Company was incorporated, and was authorized and required to construct and operate a main line of railroad and telegraph from the Missouri River westward, and particularly a branch line of railroad and telegraph from Sioux City, in the State of Iowa, so as to connect with the branch railroad and telegraph authorized and required to be built by said company in the 14th section of said act, or so as to connect with said Union Pacific Railroad, upon the same terms and conditions in all respects as applied to the main line, as will be more fully apparent by reference to the said act.

6 That the said Union Pacific Railroad Company was duly organized under said act, and duly accepted the provisions thereof, and duly filed their assent thereto, under seal, in that Department of the Interior, as required by said act.

2. That prior to the construction of the said branch railroad and telegraph from Sioux City hereinbefore referred to, and before the work thereon had been commenced by said Union Pacific Railroad Company, to wit, on the 2d day of July, 1864, the said act of Congress hereinbefore referred to was amended by an act of Congress entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the *train* for postal and military and other purposes,' approved July first, eighteen hundred and sixty-two," approved July 2d, 1864, and, by the 17th section of said last-named

and amendatory act, it was provided "that whenever a line of
7 railroad shall be completed through the States of Iowa and Minnesota to Sioux City, such company now organized, or may hereafter be organized, under the laws of Iowa, Minnesota, Dakato, or Nebraska, as *to* President of the United States, by its request, may designate or approve for that purpose, shall construct and operate a line of railroad and telegraph from Sioux City, upon the most direct and practicable route, to such a point on and so as to connect with the Iowa branch of the Union Pacific Railroad from Omaha, or the Union Pacific Railroad, as such company may select, and on the same terms and conditions as are provided in this act and the act to which this an amendment, for the construction of said Union Pacific Railroad and telegraph line and branches, and said company shall complete the same at the rate of fifty miles per year: Provided, That said Union Pacific Railroad Com-
8 pany shall be, and is hereby, released from the constructions of said branch.

"And said company constructing said branch shall not be entitled to receive in bonds an amount larger than the said Union Pacific Railroad Compay would be entitled to receive if it had constructed the branch under this act and the act to which this is an amendment; but said company shall be entitled to receive alternate sections of land for ten miles in width, on each side of the same, along the whole length of said branch; And provided further, That if a railroad should not be completed to Sioux City across Iowa or Minnesota within eighteen months from the date of this act, then said company designated by the President as aforesaid may commence, continue, and complete the construction of said branch as contemplated by the provisions of this act: Provided, however, That if the said company so designated by the President as aforesaid shall not complete the said branch from
9 Sioux City to the Pacific Railroad within ten years from the passage of this act, then, and in that case, all of the railroad which shall have been constructed by said company shall be forfeited to and become the property of the United States."

That under and by virtue of the said provisions in said last-named act, the defendant, the Sioux City and Pacific Railroad Company, a corporation organized under the laws of Iowa, by its request was designated by the President of the United States for the purpose of constructing and operating the said branch railroad and telegraph line from Sioux City to the Pacific Railroad, so authorized and required to be built by the 17th section of said last-named act as aforesaid, and undertook and did construct and complete the same before the 3rd day of March, A. D. 1869, as therein authorized and empowered to do, and received
10 the lands granted to said company and the bonds of the United States issued to said company therefor as authorized and provided by said acts of Congress, and became fully obligated to perform all of the terms, conditions, and obligations therein contained.

3. That among others, by the terms and conditions of said several acts of Congress as aforesaid, the said defendant, the Sioux City and Pacific Railroad Company, became and is bound to pay the said bonds so issued to said defendant by the United States, and was and is required to apply annually in *judgment* of said bonds and the interest thereon, until the same are fully paid, at least five per centum of the net earnings of said railroad.

4. That said bonds are still outstanding and unpaid with the interest thereon.

5. That the said defendant has operated said branch railroad
11 so constructed by it as aforesaid ever since the said 3rd day of March, A. D. 1869, and is still operating the same, and the net earnings of the said branch railroads received by said company from the said 3d day of March, A. D. 1869, to the 31st day of October, A. D. 1874, amounts to the four hundred and twenty-two thousand and eighty-eight and $\frac{46}{100}$ dollars ($422,088.46) *dollars*, and five per centum thereof is twenty-one thousand and one hundred and four dollars and forty-two cents, ($21,104$\frac{42}{100}$,) no part of which sum of the said net earnings have ever been applied by said defendant in the payment of said bonds and the interest thereon.

6. That under and by virtue of the provisions of an act of Congress entitled "An act providing for the collection of money due the United States from the Pacific Railroad Companies," approved June
12 22nd, 1874, the Secretary of the Treasury of the United States, on the 12th day of November, A. D. 1874, did make demand upon the said defendant, the Sioux City and Pacific Railroad Company, for the payment by the said company to the said United States, within sixty days thereafter, of the said sum of $21,104.42, being the amount due from said Sioux City and Pacific Railroad Company to the said United States for the five per centum of the net earnings of said railroad as aforesaid from the 3rd day of March, A. D. 1869, to the 31st day of October, A. D. 1874, a copy of which said demand, which was in writing, is hereto attached, and made part hereof as "Exhibit A," to which further reference in this behalf is made.

7. That the said defendant has neglected and refused to pay said sum as demanded aforesaid or any part thereof for more than sixty days after said demand, and has neglected and refused and still does
13 neglect and refuse to pay said sum so demanded, and to apply the same in payment of said bonds and the interest thereon.

8. That afterwards, to wit, on the 15th day of January, A. D. 1875, the said Secretary of the Treasury certified to the Attorney-General of the United States that the said defendant had neglected and refused to pay the said sum of $21,104.42 as theretofore demanded by the said Secretary, within sixty days after said demand, a copy of which said certificate of the said Secretary is hereto attached and made part hereof as "Exhibit B," to which further reference this behalf is made.

That by vritue of the premises and under the several acts of Congress hereinbefore referred, a right of action hath accrued to the plaintiff to compel the said defendant to apply the said five per centum of the net earnings of the said railroad to the payment of said bonds and
14 the interest thereon, and to collect the same, and to compel the defendant to pay the same to the plaintiff.

Wherefore the said United States institutes this action, and prays judgment in its favor and against said defendant for said sum of $21,104.42, with interest thereon from the time of said demand and for costs.

(S'g'd) JAMES T. LANE.
U. S. Dist. Attorney for Dist of Iowa.

(Endorsed:) In U. S. circuit court. United States *vs.* The Sioux City and Pacific Railroad Company. 1981. Petition. At law. Fled Ap'l 9, 1875. George B. Corkhill, clerk. James T. Lane, U. S. dist. att'y.

15 EXHIBIT A.

To John M. Glidden, the treasurer of the Sioux City and Pacific Railroad Company:

The act of Congress approved June 22nd, 1874, entitled "An act providing for the collection of moneys due the United States from the Pacific Railroad Companies," directs the Secretary of the Treasury to require payment of the railroad companies, their successors and assigns, or the successors or assigns of any or either of said companies, of all sums of money due or to become due the United States for the five per centum of the net earnings provided for by the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two, or by any other act or acts in
16 relation to the companies therein named, or any other such company or companies.

Said act of June 22, 1874, also provides that in case either of said railroad companies shall neglect or refuse to pay the same within sixty days after demand therefor made upon the treasurer of such railroad company, the Secretary of the Treasury shall certify that fact to the Attorney-General.

Now, therefore, I, B. H. Bristow, Secretary of the Treasury, in accordance with the provisions of said act of Congress approved June 22nd, 1874, hereby demand of you, John M. Glidden, the treasurer of the said Sioux City and Pacific Railroad Company, payment to the United States, within sixty days after service of this demand upon you, of twenty-one thousand one hundred and four dollars and forty-two cents, being the sum due from said Sioux City and Pacific Railroad Company to the United States for the five per centum of its net earnings from the
17 third day of March, eighteen hundred and sixty-nine, the day of completion of said Sioux City and Pacific Railroad, to the thirty-first day of October, eighteen hundred and seventy-four.

If said Sioux City and Pacific Railroad Company shall neglect or refuse to pay the United States said sum of twenty one thousand one hundred and four dollars and forty-two cents within sixty days after service of this demand, I shall certify that fact to the Attorney-General, in order that the necessary suits and proceedings to collect or otherwise obtain redress in respect of the same may be instituted and prosecuted to a final determination.

In witness whereof I have hereto set my hand and the seal of the Treasury Department this tenth day of November, eighteen hundred and seventy-four.

(Signed) [SEAL.] B. H. BRISTOW,
Secretary of the Treasury.

18 I, Bluford Wilson, do certify that on the twelfth day of November, eighteen hundred and seventy-four, I made personal service of a written demand, signed by the Secretary of the Treasury, upon John M. Glidden, esq., treasurer of the Sioux City and Pacific Railroad Company, by delivering to him, at his office in Boston, Massachusetts, said demand, of which the within is an exact counterpart.

(Signed) BLUFORD WILSON.

NOVEMBER 12*th*, 1874.

I acknowledge service of the demand above mentioned.

(Signed) JOHN M. GLIDDEN,
Treasurer of the Sioux and Pacific Railroad Company.

19 EXHIBIT B.

TREASURY DEPARTMENT,
Washington, D. C., January 15th, 1875.

I, B. H. Bristow, Secretary of the Treasury, do certify that on the twelfth day of November, A. D. 1874, in accordance with the provisions of an act of Congress approved June 22, 1874, I made a written demand, herewith enclosed, upon John M. Glidden, treasurer of the Sioux City and Pacific Railroad Company, for the sums of money due from said railroad company to the United States for the five per centum of its earnings from the third day of March, 1869, the day of its completion, to the thirty-first day of October, 1874, amounting to $21,104.42.

I further certify that said railroad company has neglected and refused to pay the same within sixty days after demand therefor, and still neglects and refuses to pay the same.

(Signed) B. H. BRISTOW,
Secretary of the Treasury.

20 UNITED STATES OF AMERICA.
District of Iowa:

To the marshal of the district of Iowa:

In the name of the President of the United States, you are hereby commanded to summon The Sioux City and Pacific Railroad Company, a citizen of the State of Iowa, to appear before the honorable circuit court of the United States, in and for the district of Iowa, on the first day of the next term thereof, to be begun and holden at the city of Des Moines, on the second Monday of May next, it being the 10 day of May, A. D. 1875, then and there to answer unto the United States of America in a plea of debt in the sum of twenty-one thousand one hundred and four $\frac{42}{100}$ dollars, the same being five per centum of the net earnings of the said det't from March 3, 1869, to Oct. 31, 1874, with interest.

21 Hereof fail not, and have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at the city of Des Moines, this the 9th day of April, A. D. 1875, and of the Independence of the United States the 99th.

[L. S.] GEORGE B. CORKHILL,
Clerk U. S. Circuit Court, District Iowa.

I hereby appoint Heil Hale as special deputy to serve this writ.

(S'g'd) J. W. CHAPMAN,
U. S. M. E.

(Endorsed:) No. 1931. Summons. District court of the United States, district of Iowa. United States vs. Sioux City and Pacific R. R. Co. Filed Apr. 16, 1875. George B. Corkhill, clerk. Ja's T. Lane,
22 attorney for plaintiff; residence, Davenport.

This writ came into my hands for service on the 10th day of April, A. D. 1875, and I served the same on the within-named Sioux City and Pacific Railroad Company on the 14th day of April, A. D. 1875, by reading the same to J. Van Deventer, vice-president of said company, and by delivering a true copy to J. Van Deventer at the city of Cedar Rapids, in the county of Linn, and State of Iowa.

J. W. CHAPMAN,
U. S. Marshall,
By HEIL HALE,
Deputy.

Marshal's fees: Mileage, 175 miles, $10.50; service on, $2.00—$12.50.

23 *Demurrer.*

UNITED STATES OF AMERICA,
District of Iowa:

In the United States circuit court.

UNITED STATES OF AMERICA
vs.
THE SIOUX CITY AND PACIFIC RAILROAD Company.

The defendant demurs to the petition herein, and states the following as grounds thereof:

1. The petition does not state facts sufficient to entitle the plaintiff to the relief demanded.

2. The claim mentioned in said petition is based upon section 6 of the act of Congress approved July 1, 1862, cited in said petition, which said section, so far as the same relates to applying five per cent. of the net earnings of said defendants to the payment of the principal and interest of the said bonds, was amended and superceded by sec-
24 tion 5 of the act approved July 2d, 1864, and the defendants thereby released from the payment of the same.

N. M. HUBBARD,
E. S. BAILEY,
Att'ys for Def't.

(Endorsed:) No. 1981. U. S. circuit court. United States vs. Sioux City and Pacific Railroad Co. Demurrer. Filed May 12, 1875. George B. Corkhill, clerk. N. M. Hubbard, E. S. Bailey, def't's att'ys.

25 United States circuit court, district of Iowa, May term, A. D. 1875.

THE UNITED STATES
vs.
THE SIOUX CITY AND PACIFIC RAILROAD Company. } No. 1981. Law.

FRIDAY, *May* 21, 1875.

This cause came on this day for hearing on defendant's demurrer to the plaintiff's petition, and the court having heard arguments of counsel thereon, Ja's T. Lane, for the plaintiff, and E. S. Bailey and N. M. Hubbard, for the defendant, and being fully advised in the premises, orders that said demurrer be, and is hereby, overruled.

26 *Answer.*

Circuit court of the United States, district of Iowa.

UNITED STATES OF AMERICA
vs.
THE SIOUX CITY AND PACIFIC RAILROAD Company.

The defendant, for answer to the petition in the above-entitled action, denies each and every allegation therein contained.

And the defendant specifically denies that the net earnings of said

defendant's railroad received by it from the 3d day of March, 1869, to the 31st day of October, 1874, amounts to the sum of four millions two hundred and twenty thousand eight hundred and eighty-four dollars, or any other sum.

2. And for a further and second answer to said petition, the said defendant says that said plaintiff is indebted to said defendant in the sum of twenty thousand eight hundred and five and $\frac{04}{100}$ dollars
27 for balance due for services performed for said plaintiff by said defendant in carrying the United States mails from January 1, 1873, to May 1, 1875, on post-office route No. 27029, and also transportation of men and freight to May 1, 1875, a particular statement and account of which is hereto attached and made a part of this answer; that each of the said several items and claims have been duly presented to the proper accounting-officers of the Treasury of the United States for the' examination and by them disallowed and not paid.

Wherefore defendants asks judgment against said plaintiff for said sum of $20,805.04, besides costs.

N. M. HUBBARD,
E. S. BAILEY,
Def't's Att'ys.

28 *United States Gov't to Sioux City and Pac. R. R. Co., D'r.*

1875.

May 1.	For carrying U. S. mail over F. E. & Mo. Val. R. R., (Route No. 27029) from Jan'y 1st, 1873, to May 1st, 1875, 2 years and $\frac{1}{4}$ of year, 51 & $\frac{4}{10}$ miles, at the rate of $50.00 per mile per annum.	5,996 66	
	For $\frac{1}{2}$ of mail-earnings on 32 miles Cal. J'n to Frémont, (Route No. 27029,) from Jan'y 1st, 1873, to May 1st, 1875, @ $50.00 per mile per annum, 50 % of $3,733.00	1,866 50	
	" total amount of mail-earnings Mo. Val. to Cal. J'n, (Route No. 27029,) from Jan'y 1st, 1873, to May 1st, 1875, 6 & $\frac{23}{100}$ miles, @ $75.00 per mile per annum	1,690 25	
	" $\frac{1}{2}$ of mail-earnings Cal. J'n to S. City, (Route 27029,) from Jan'y 1st, 1873, to May 1st, 1875, 69 & $\frac{77}{100}$ miles, @ $75.00 per mile per annum, 50 % of $12,269.75	6,104 87	
		$15,058 28	
	Less am't cash rec'd April 16th, 1873.	405 33	
			14,652 95
	For earnings on transportation of men and freight to May 1st, 1875, per Gov. B. S., and requisitions, 50 % of $20,930.73	10,465 36	
	Less am't cash rec'd on same as follows:		
1870.	Dec. 16th	179 10	
1871.	Aug. 15th	4 02	
1873.	Jan'y 22nd	248 16	

	Feb'y 26th	156 28		
	28th	429 58		
	March 5th	1,854 09		
	18th	1,382 88		
1874.	Jan'y 20th	59 16		
			4,313 27	
				6,152 09
				$20,805 04

29 *Demurrer.*

In U. S. circuit court, dist. of Iowa, Oct. term, 1875.

UNITED STATES
vs.
THE SIOUX CITY AND PACIFIC R. R. COMPANY.

Now comes the United States of America, plaintiff herein, by James T. Lane, U. S. dist. attorney, and demurs to the second defense contained in the answer of the defendant herein, and says the same is insufficient in law for the following reasons, viz:

1st. Under the acts of Congress of July 1, 1862, and of July 2, 1864, under which the defendant was organized as a corporation, it was provided that the United States should retain the monies due to said defendant as compensation for freights and transportation for the said United States, and that the sum should be applied and paid by
30 the United States on the bonds and the interest accruing thereon, issued by the United States in aid of said defendant's railroad; and said amount as claimed by defendant cannot be pleaded as an offset against the claim for the five per cent. sued for by plaintiff, and no recovery can be had therefor by defendant in this action.

2. By the 2d section of the act of Congress of March 3, 1873, entitled "An act making appropriations for the legislature, executive, and judicial expenses of the Government for the year ending June 30, 1874, and for other purposes," the Secretary of the Treasury of the United States was directed to withhold all payments to said defendant of the monies alleged in said 2d defense to be due to defendant; and said defendant was authorized to bring suit therefor in the Court of Claims, and the jurisdiction is therefore exclusively vested in that court, and
31 this court has no power, authority, or jurisdiction to hear said claim set up in said 2d defense, and the same is not a good defense in this action and cannot be determined by this court.

Whereupon plaintiff prays judgment whether he ought to be required to answer the same.

(S'g'd) JAMES T. LANE,
U. S. Dist. Att'y.

(Endorsed:) 1981. United States vs. The Sioux City and Pacific Railroad Company. Demurrer. Filed Oct. 16th, 1875. George B. Corkhill, clerk. James T. Lane, U. S. dist. att'y.

32 United States circuit court, district of Iowa. October term, 1875.

THE UNITED STATES
vs.
SIOUX CITY AND PACIFIC RAILROAD COMPANY. } No. 1981. Law.

THURSDAY, *October* 28, 1875.

This cause came on this day for hearing on pl'ff's demurrer to 2d

count of defendant's answer; Lane, dist. att'y, appearing for pl'ff, and Hubbard and Bailey for defendant; and the court, after argument of counsel thereon, takes same under advisement.

33 United States circuit court, district of Iowa, October term, A. D. 1875.

THE UNITED STATES
vs.
SIOUX CITY AND PACIFIC RAILROAD CO. } No. 1981. Law.

FRIDAY, *October* 29, 1875.

The demurrer to 2nd count of answer heretofore submitted herein is continued under advisement until January adjourned term.

34 Circuit court of the United States, district of Iowa.

UNITED STATES OF AMERICA
vs.
THE SIOUX CITY AND PACIFIC RAILROAD Company.

The above named defendant, The Sioux City and Pacific Railroad Company, hereby dismisses (without prejudice to its right to bring an action thereon) the counter-claim set up in the answer on file in said action, and asks that an order to that effect be entered on the record.

Dated March 29, 1876.

(S'g'd) E. S. BAILEY,
Def't's Att'y.

(Endorsed:) In U. S. circuit court. United States vs. Sioux City and Pacific R. R. Co. Dismissal of *court* claim. Filed March 31, 1876. E. R. Mason, clerk. E. S. Bailey, def't's att'y.

35 United States circuit court.

THE UNITED STATES OF AMERICA
vs.
SIOUX CITY AND PACIFIC RAILROAD COMPANY.

Upon the trial of this action, the following facts are admitted:

1. That the facts stated in paragraphs one, two, three, and four of the petition are true.

2. That the said defendant has operated said railroad from March 3, 1869, to October 31, 1874, and during said time the total amount of receipts of money earned by said company in operating said road, after deducting the expenses of operating the same and fixtures, (but without deducting the payments of interest made on the first-mortgage bonds of the company during that time,) amounts to the sum of four hundred and seven thousand seven hundred and ninety-nine $\frac{59}{100}$ dollars ($407,799.59) only.

3. That the defendant has paid during the period aforesaid, to wit, from March 3, 1869, to October 31, 1874, semi-annual interest
36 on its first-mortgage bonds issued in conformity with the provisions of section 10 of the act approved July 2, 1864, amendatory of the act approved July 1, 1862, entitled "An act to aid in the construc-

tion of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," the sum of four hundred and forty-two thousand four hundred and forty dollars, ($442,440.00.)

4. That the facts stated in paragraphs six, seven, and eight of the petition are true; and that no part of the earnings of said road during the period aforesaid has been paid to the plaintiff by the company.

5. That if the amount paid by the company as hereinbefore stated for interest on its first-mortgage bonds during said time should, under the law, be deducted from the receipts of the company in order to ascertain the net earnings thereof, then there were no net earnings during said time; but if, on the other hand, the said payments of interest
37 should not be deducted from the earnings of the road to ascertain the net earnings, then the net earnings of the road during said period amounted to the sum of four hundred and seven thousand seven hundred and ninety-nine $\frac{59}{100}$ dollars, ($407,799.59.)

(Signed) JAMES T. LANE,
U. S. Dist. Attorney.

(") E. S. BAILEY,
Def't's Att'y.

(Endorsed:) 1981. United States circuit court. United States vs. The Sioux City and Pacific R. R. Co. Agreed statement. Filed Oct. 30, 1876. E. R. Mason, clerk.

38 United States circuit court, district of Iowa, October term, '76.

UNITED STATES OF AMERICA
vs.
SIOUX CITY AND PACIFIC RAILROAD COMPANY. } No. 1981. Law.

MONDAY, *October* 30, 1876.

This cause coming on to be heard before the court, a stipulation having been filed in writing waiving a jury, James T. Lane, esq., district attorney, appearing for the plaintiff, and E. S. Bailey appearing for the defendant, and the court having heard all the evidence introduced by the parties, finds the following facts from the evidence:

1. That the facts stated in paragraphs one, two, three, and four of the petition are true.

2nd. That the said defendant has operated said railroad from March 3, 1869, to October 31, 1874, and during said time the total amount of receipts of money earned by said company in operating said road, after deducting the expenses of operating the same and fixtures, (but
39 without deducting the payments of interest made on the first-mortgage bonds of the company during that time,) amounts to the sum of four hundred and seven thousand seven hundred and ninety-nine and $\frac{59}{100}$ dollars, ($409.799.59) only.

3d. That the defendant has paid during the period aforesaid, to wit, from March 3, 1869, to October 31, 1874, semi-annual interest on its first-mortgage bonds, issued in conformity with the provisions of section 10 of the act approved July 2, 1864, amendatory of the act approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," the sum of four hundred and forty-two thousand four hundred and forty dollars.

4. That the facts stated in paragraph' six, seven, and eight of the petition are true, and that no part of the earnings of said road during the period aforesaid has been paid to the plaintiffs by the company.

40 5. That if the amount paid by the company, as hereinbefore found, for interest on its first-mortgage bonds during said time should, under the law, be deducted from the receipts of the company, in order to ascertain the net earnings thereof, then the court finds there were no net earnings during said time; but if, on the other hand, the said *judg*ments of interest should not be deducted from the earnings of the road to ascertain the net earnings, then the net earnings of the road during said period amounted to the sum of four hundred and seven thousand seven hundred and ninety-nine $\frac{59}{100}$ dollars, ($407,799.59.)

The court finds, as conclusion of law, that the defendant is entitled to judgment; and it is thereupon considered and adjudged that defendant go hence without day.

To which judgment the plaintiff excepts.

41 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Sioux City and Pacific Railroad Company:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the United States circuit court for the district of Iowa, wherein the United States is plaintiff in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this 26th day of December, 1876.

JOHN F. DILLON,
Circuit Judge.

(Indorsed:) No. 1981. United States vs. Sioux City and Pacific R. R. Co. Citation. Filed Dec. 28, 1876. E. R. Mason, clerk.

(Indorsement on cover:) No. 965. The United States, plaintiffs in error, vs. The Sioux City and Pacific Railroad Company. Iowa C. C. U. S. Filed 30th October, 1877.